Trujillo v. Apple Computer, Inc. et al Doc. 106

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

JOSE TRUJILLO, individually and on behalf of all others similarly situated, Plaintiff, vs. APPLE COMPUTER, INC., a California Corporation, and AT&T MOBILITY LLC, a Georgia Corporation, Defendants.	Case No. 1:07-cv-04946 DECLARATION OF RAMONCITO BALCE IN SUPPORT OF AT&T MOBILITY LLC'S MOTION TO COMPEL ARBITRATION AND DISMISS ACTION

I, Ramoncito Balce, hereby declare as follows:

1. I am employed by AT&T Mobility LLC ("ATTM") as the Store Manager of the ATTM store on 619 North York Road in Elmhurst, Illinois. The following facts are of my own personal knowledge, and if called as a witness I could and would testify competently as to their truth.

2. The ATTM store at which I work keeps in stock whatever version of ATTM's Terms of Service booklet that is then in effect. Copies of that booklet are available for customers to review and to take with them.

3. According to ATTM's records, Dawn Marie Trujillo came to the ATTM store at which I work on June 29, 2007, the first day that iPhones were sold, in order to purchase an iPhone to use in connection with her preexisting ATTM account. Because the store had sold out of iPhones, the cashier arranged to have one shipped to Kathy Trujillo at 10500 Schubert Avenue, Melrose Park, Illinois 60164. Dawn Marie Trujillo paid for the transaction with a MasterCard credit card. A true and correct copy of the receipt for that transaction is attached as Exhibit 1.

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4. The IMEI number for the iPhone that Dawn Marie Trujillo ordered is 011245004080345. Although the receipt lists that number as a "serial number," in fact it is the IMEI number. An IMEI number is an identifying number that is assigned to each GSM mobile phone, including each iPhone.

5. According to ATTM's records, Dawn Marie Trujillo did not activate that iPhone. Instead, it was activated by Jose Trujillo. I have located a summary of some information about Mr. Trujillo's account using a computer in my store. A true and correct copy of a screen shot of that information, with Mr. Trujillo's social security number redacted, is attached as Exhibit 2. An entry at the bottom of the screen shot confirms that the iPhone with IMEI number 011245004080345 is associated with Mr. Trujillo's account.

6. According to ATTM's records, an employee at my store, Nicholas Mantucca, created a tentative "BAN" (an account number) for Mr. Trujillo at about 6:38 p.m. on July 5, 2007. A true and correct copy of a screen shot of ATTM's record of this transaction, which I generated using a computer at my store, is attached as Exhibit 3.

7. As that screen shot confirms, ATTM's records also reflect that Mr. Mantucca ran a credit check on Mr. Trujillo at that time. Mr. Trujillo sought to activate the iPhone that Dawn Marie Trujillo had purchased on a new account in his name. ATTM requires that all new subscribers for wireless service other than those who pre-pay for service pass a credit check in order to avoid having to pay a deposit.

8. Based on my review of the records, I believe that Mr. Trujillo came to the store to give Mr. Mantucca the information needed to run the credit check, such as his address and his social security number. It is store policy not to run a credit check for a customer unless the customer is present in the store. Mr. Mantucca, who set up the tentative account number and ran the credit check, no longer is a store employee.

9. As the screen shot of ATTM's records (Exhibit 3) confirms, the iPhone was activated that same day at about 7:50 p.m. The reference to Apple in the "Created By" field of that entry indicates that the iTunes software was used to activate the iPhone. During the

activation process, Mr. Trujillo's iPhone was assigned the wireless phone number (312) 576-4104.

10. Another entry on that screen shot indicates that ATTM's telephone customer service representatives were asked to, and did, change Mr. Trujillo's phone number to (708) 310-0069 about 15 minutes after the activation process was completed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 19, 2008.

Ramoncito Balce